AO 106 (Rev. 7/87) Affidavit for Search Warrant

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

FILED
07 DEC -7 PM 1:51
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

In the Matter of the Search of
(Name, address or brief description of person, property or premises to be searched)

**Boost Motorola i415 Cellular Telephone,
Model #H80XAH6RR1AN, IMEI #001702662712660,
Serial No. 364VHC3VTK**

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER: '07 MJ 2936

I **Daniel L. Duff.** being duly sworn depose and say:

I am a(n) **Senior Special Agent, Immigration and Customs Enforcement** and have reason to believe
Official Title

that ☐ on the person of or ☒ on the property or premises known as (name, description and/or location)

See Attachment A, herein incorporated by reference,

in the **Southern** District of **California**

there is now concealed a certain person or property, namely (describe the person or property to be seized)

See Attachment B, herein incorporated by reference,

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)
fruits, evidence, and instrumentalities of crimes against the United States,

concerning a violation of Title **21** United States code, Section(s) **952, 960(a), 841(a)(1), and 846**.
The facts to support a finding of Probable Cause are as follows:

See Attached Affidavit

Continued on the attached sheet and made a part hereof. ☒ Yes ☐ No

Signature of Affiant
**Daniel L. Duff, Senior Special Agent
Immigration and Customs Enforcement**

Sworn to before me, and subscribed in my presence

12/7/2007 at **San Diego, California**
Date City and State

Honorable Ruben B. Brooks, United States Magistrate Judge
Name and Title of Judicial Officer

Signature of Judicial Officer

UAC

AFFIDAVIT

I, Daniel L. Duff, being duly sworn, declare and state:

1. I have been employed as a Department of Homeland Security, United States Immigration and Customs Enforcement (ICE) Special Agent (SA) since June 15, 2003. I am currently assigned to the Special Agent-in-Charge Office in San Diego, California. I am assigned to conduct investigations of criminal violations relating to the smuggling, transportation, and distribution of controlled substances. Prior to my employment with ICE, I served as a Canine Enforcement Officer with the United States Treasury Department, United States Customs Service for approximately two and a half years. Prior to my employment with the United States Customs Service, I was employed as a United States Border Patrol Agent for approximately a year and a half.

2. As a federal law enforcement officer for more than seven years, I have received formal training, as well as extensive on-the-job experience and training, relative to the investigation of the importation, transportation, sales, manufacturing and distribution of controlled substances. I have also participated in investigations, which involved the use of electronic surveillance techniques.

3. This statement is made in support of an application for a search warrant to search cellular phones retained as evidence from Stephen Francis Rhett on September 23, 2007, and believed to contain evidence of violations of Title 21, United States Code, Sections 952 and 960, Importation of a Controlled substance.

4. This affidavit does not contain all of the information known to Agents regarding this investigation, but rather, contains only the facts believed to be necessary to establish probable cause.

ITEMS TO BE SEARCHED

5. The items to be searched are further described as follows:

a. The stored memory, active digital display, and all other electronic features of one Boost Motorola i415 cellular telephone, black in color, Model #H80XAH6RR1AN, IMEI #001702662712660, serial #364VHC3VTK.

b. The cellular phone was included in property taken from Stephen Francis Rhett incident to his arrest on September 23, 2007, attempting to smuggle 508.10 kilograms (1117.82 pounds) of marijuana from Mexico through the San Ysidro Port of Entry. The cellular phone is presently being held by Immigration and Customs Enforcement in a locked storage container in a secure area.

ITEMS TO BE SEIZED

6. The items to be seized are evidence of violation of Title 21, United States Code, Sections 952, 960(a), 841(a)(1), and 846, namely:

a. Telephone numbers of incoming and outgoing calls stored in the call registry;

b. Telephone numbers and corresponding names to those numbers in the cellular telephone's address book;

c. Any incoming and outgoing text messages;

d. Stored photographic images;

e. Telephone subscriber information; and

f. Any other electronic information in the stored memory and/or accessed by the active electronic features of the cellular telephone which evidences the existence of unlawful importation of a controlled substance into the United States, possession of a controlled substance with intent to distribute, and attempt and conspiracy to commit any of the above.

PROBABLE CAUSE

7. Based upon my training and experience as a Special Agent, consultations with other Special Agents and law enforcement officers experienced in narcotics smuggling investigations, and all the facts and opinions set forth in this affidavit, I know the following:

a. Narcotic smugglers will use digital and cellular phones because they are mobile, they have instant access to phone calls and voice messages;

b. Narcotic smugglers believe that cellular phones provide greater insulation and protection against court ordered wiretaps and they believe in the inability of law enforcement personnel to simultaneously track the originating and destination phone numbers of calls placed to and from their digital and cellular phones.

8. On September 23, 2007, Stephen Francis Rhett and Janet Bernice Forbes attempted to enter the United States through the San Ysidro Port of Entry. Rhett was the driver of a 1999 Ford F-250 bearing a temporary operating permit, indicating a California license plate 3QOS602, towing a white Eagle trailer bearing a California license plate 4JL1558.

9. A Customs and Border Protection Officer assigned to the primary inspection operations made contact with Rhett, the driver. Rhett made a negative declaration to Customs and Border Protection Officers. The Customs and Border Protection Officer escorted the vehicle to Secondary inspection.

10. In secondary, Customs and Border Protection Officers performed a border search of the vehicle, which led to the discovery of 108 packages in a non-factory floor compartment of the Eagle trailer. The contents of the packages field-tested positive for marijuana. The total weight of the marijuana was 508.10 kilograms (1117.82 pounds).

11. Immigration and Customs Enforcement Special Agents made contact with Rhett and placed him under arrest. Rhett had one cellular telephone in his possession. Agents seized Rhett's phone incident to his arrest.

12. During the interview of Janet Forbes, it was discovered the Rhett received numerous cellular telephone calls while they were waiting in line to enter the United States. According to Forbes, it appeared to her to be the same person calling every time. Forbes further stated that she overheard the caller tell Rhett that he needed to change lanes numerous times.

13. Based upon the facts contained in this affidavit and my experience and training, I believe that there is probable cause to believe that the cellular telephone contain evidence of violations of Title 21, United States Code, Sections 952, 960(a), 841(a)(1), and 846.

Daniel L. Duff, Senior Special Agent

Immigration and Customs Enforcement

Sworn to and subscribed to before me

This 7th day of December 2007.

HONORABLE RUBEN B. BROOKS

UNITED STATES MAGISTRATE JUDGE

vr

ATTACHMENT A

The items to be searched are described as follows:

a. The stored memory, active digital display, and all other electronic features of one Boost Motorola i415 cellular telephone, black in color, Model #H80XAH6RR1AN, IMEI #001702662712660, serial #364VHC3VTK.

a.The cellular phone was included in property seized from Stephen Francis Rhett incident to his arrest on September 23, 2007 while attempting to smuggle 508.10 kilograms (1117.82 pounds) of marijuana through the San Ysidro Port of Entry. The cellular phone is presently being held by Immigration and Customs Enforcement in a locked storage container in a secure area in Otay Mesa, California.

ATTACHMENT B

The items to be seized are evidence of violation of Title 21, United States Code, Sections 952, and 960 importation of a Controlled Substance, namely:

a. Telephone numbers of incoming and outgoing calls stored in the call registry;

b. Telephone numbers and corresponding names to those numbers in the cellular telephone's address book;

c. Any incoming and outgoing text messages;

d. Stored photographic images;

e. Telephone subscriber information; and

f. Any other electronic information in the stored memory and/or accessed by the active electronic features of the cellular telephone which evidences the existence of unlawful importation of a controlled substance into the United States, possession of a controlled substance with intent to distribute, and attempt and conspiracy to commit any of the above